

## AMENDMENTS TO THE DRAWINGS

Labels have been added to the replacement sheets for all of the drawings. No new matter has been added.

Attachment: Replacement Sheets

REMARKS

Reconsideration of the present application as amended and in view of the additional discussion below is respectfully requested.

Claims 1, 3, 4, 5, and 7 have been amended, and claims 2 and 6 have been canceled. Claims 9-11 have been added. Claims 1, 3-5, 7, and 8-11 are pending in this application.

In response to the Examiner's objection in the Office Action mailed March 11, 2005, the enclosed formal drawings are hereby resubmitted for consideration.

The Applicants first wish to thank Examiner Leung for taking the time to conduct the telephonic interview of May 4, 2005 concerning the above-identified application. At the interview, proposed claim amendments similar to the amendments made in the present response were presented, and the proposed amendments were discussed in view of the cited references. It was the undersigned representative's impression that the Examiner's comments regarding the proposed claim amendments were generally favorable, but it is appreciated that the Examiner's views might change after conducting an additional search. The substantive remarks presented at the interview have been again provided below.

Currently amended independent claim 1 corresponds to proposed claim 1 as presented at the interview, and independent claim 1 generally recites the features from dependent claim 2 in independent form. Based on the Examiner's positive comments regarding proposed claim 1 during the interview, it is believed that amended independent claim 1 and its dependent claims are allowable over the references of record as discussed below.

Currently amended independent claim 5 corresponds to proposed claim 5 as presented at the interview, and independent claim 5 generally recites the features from dependent claim 6 in independent form. Based on the Examiner's positive comments regarding proposed claim 5 during the interview, it is believed that amended independent claim 5 and its dependent claims are allowable over the references of record as discussed below.

The Office Action of March 11, 2005, included the following issues:

- I.       Claims 1-3 and 5-7 were rejected under 35 U.S.C. § 102(b) in view of U.S. Patent No. 4,933,526 to Fisher et al.
- II.      Claims 1-3 and 5-7 were rejected under 35 U.S.C. §102(b) in view of U.S. Patent No. 4,866,232 to Stone.

III. Claims 4 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,933,526 to Fisher et al. in view of U.S. Patent No. 5,780,824 to Matos.

IV. Claims 4 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,866,232 to Stone in view of U.S. Patent No. 5,780,824 to Matos.

**I. 35 U.S.C. § 102(b) Rejection Based On The '526 Patent**

The Office Action of March 11, 2005 rejected claims 1-3 and 5-7 under 35 U.S.C. § 102(b) in view of U.S. Patent No. 4,933,526 to Fisher et al.

It is well settled law that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference in as complete detail as is contained in the claim. Moreover, it is not sufficient that the prior art reference disclose all of the elements in isolation. Rather, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). In traversal, the Applicants submit that Fisher et al. does not disclose the invention set forth in the claims.

Fisher et al. teaches a tray with at least one and preferably a plurality of mold cavities (Col. 2, ll. 65-67). The cavities may all be similar, but preferably will vary in geometry to simulate the normal variations and distribution encountered in a naturally occurring finished food items (Col. 3, ll. 3-7). Fisher et al. does disclose the geometry of a cavity or compartment may vary; however, Fisher et al. does not disclose that the *surface* of a cavity or compartment has a *distinct pattern*. There is no teaching in Fisher et al. of a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. Further, there is no teaching in Fisher et al. of a second compartment having a bottom surface defining a second bottom surface pattern. Fisher et al. does not disclose that the first pattern and the second pattern are distinct from each other. As discussed in the interview, there is no teaching in Fisher et al. of first and second bottom surface patterns selected from the group consisting of a flat pattern, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern. Since all the elements of claims 1 and 5 cannot be found in Fisher et al., Fisher et al. cannot be said to anticipate these claims.

For the above-discussed reasons, currently amended independent claims 1 and 5 are not anticipated by Fisher et al. and withdrawal of the rejections based on the same is respectfully requested. Dependent claims 3 and 7 are dependent on an independent claim believed to be allowable and for this reason, among others, are also allowable.

## II. 35 U.S.C. § 102(b) Rejection Based On The '232 Patent

The Office Action of March 11, 2005 rejected claims 1-3 and 5-7 under 35 U.S.C. § 102(b) in view of U.S. Patent No. 4,866,232 to Stone.

It is well settled law that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference in as complete detail as is contained in the claim. Moreover, it is not sufficient that the prior art reference disclose all of the elements in isolation. Rather, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). In traversal, the Applicants submit that Stone does not disclose the invention set forth in the claims.

Stone teaches a tray-like container with three compartments (Col. 6, ll. 43-48). Stone teaches a metallized ink is deposited on predetermined areas I, II, and III of the interior surface of the bottom panel (Col. 6, ll. 65-67). As discussed in the interview, there is no teaching in Stone of a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. The independent claims 1 and 5 include a second compartment having a bottom surface defining a second bottom surface pattern. As discussed in the interview, there is no teaching in Stone of first and second bottom surface patterns selected from the group consisting of a flat pattern, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern. Since all the elements of claims 1 and 5 cannot be found in Stone, Stone cannot be said to anticipate these claims.

For the above-discussed reasons, currently amended independent claims 1 and 5 are not anticipated by Stone and withdrawal of the rejections based on the same is respectfully requested. Dependent claims 3 and 7 are dependent on an independent claim believed to be allowable and for this reason, among others, are also allowable.

For this and other reasons, currently amended dependent claims 4 and 8 are patentable over the '526 patent to Fisher et al. in view of the '824 patent to Matos and withdrawal of the rejection based on the same is respectfully requested.

#### IV. 35 U.S.C. § 103 Rejections

The Office Action of March 11, 2005 rejected claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,866,232 to Stone in view of U.S. Patent No. 5,780,824 to Matos.

In traversal, the Applicant submits that a *prima facie* case of obviousness has not been established because there has been shown no proper teaching, suggestion or motivation to modify the cited reference in the manner that has been asserted in the Office Action to be obvious. Moreover, the Applicant submits that, when properly considered, the only suggestion of the presently claimed invention is provided by the present application.

To establish *prima facie* obviousness of a claimed invention, the Patent Office has the initial burden of identifying in the prior art some teaching, suggestion or motivation to modify the cited references. Furthermore, the prior art must be taken only for what it would teach or suggest to a person of ordinary skill in the art at the time of the invention, without using impermissible hindsight. Moreover, "it is impermissible within the framework of section 103 to pick and choose from any one reference only so much as it will support a given position, to the exclusion of other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art." In re Wesslau, 353 F.2d 238, 241 (CCPA 1965).

The cited references fail to disclose or suggest all of the features recited in dependent claims 4 and 8. Stone fails to disclose a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. Stone does not disclose first and second patterns selected from the group consisting of a flat portion, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern.

Similarly, Matos fails to disclose a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. Like Stone, Matos also does not disclose first and second patterns selected from the group consisting of a flat pattern, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern.

### III. 35 U.S.C. § 103 Rejections

The Office Action of March 11, 2005 rejected claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,933,526 to Fisher et al. in view of U.S. Patent No. 5,780,824 to Matos.

In traversal, the Applicant submits that a *prima facie* case of obviousness has not been established because there has been shown no proper teaching, suggestion or motivation to modify the cited reference in the manner that has been asserted in the Office Action to be obvious. Moreover, the Applicant submits that, when properly considered, the only suggestion of the presently claimed invention is provided by the present application.

To establish a *prima facie* case of obviousness of a claimed invention, the Patent Office has the initial burden of identifying in the prior art some teaching, suggestion or motivation to modify the cited reference. Furthermore, the prior art must be taken only for what it would teach or suggest to a person of ordinary skill in the art at the time of the invention, without using impermissible hindsight. Moreover, “it is impermissible within the framework of section 103 to pick and choose from any one reference only so much as it will support a given position, to the exclusion of other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art.” In re Wesslau, 353 F.2d 238, 241 (CCPA 1965).

The cited references fail to disclose or suggest all of the features recited in dependent claims 4 and 8. For example, Fisher et al. fails to disclose a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. Fisher et al. fails to disclose a second compartment having a bottom surface defining a second bottom surface pattern. Fisher et al. does not disclose first and second patterns selected from the group consisting of a flat pattern, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern.

Similarly, Matos fails to disclose a first compartment having a bottom surface defining a first bottom surface pattern having a plurality of projections. Matos does not disclose first and second patterns selected from the group consisting of a flat pattern, a ribbed pattern, a sinusoidal pattern, and a pyramidal pattern.

Without the benefit of hindsight gained from viewing the present application, one of ordinary skill in the art at the time of the invention would not have modified the cited references as asserted in the Office Action to arrive at the invention as recited in dependent claims 4 and 8.

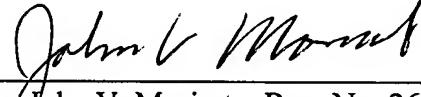
Without the benefit of hindsight gained from viewing the present application, one of ordinary skill in the art at the time of the invention would not have modified the cited references as asserted in the Office Action to arrive at the invention as recited in dependent claims 4 and 8. For this and other reasons, the Applicant respectfully submits that dependent claims 4 and 8 are patentable over the '232 patent to Stone in view of the '824 patent to Matos and withdrawal of the rejection based on these references is respectfully requested.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an early notice of allowance is earnestly solicited. If after reviewing this amendment the Examiner feels that any issues remain which must be resolved before the application can be passed to issue, the Examiner is invited to contact the Applicant's undersigned representative by telephone to resolve such issues.

Respectfully submitted

By:

  
John V. Moriarty, Reg. No. 26,207  
Woodard, Emhardt, Moriarty, McNett &  
Henry LLP  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, Indiana 46204-5137  
(317) 634-3456 (telephone)  
(317) 637-7561 (facsimile)